

United States
Circuit Court of Appeals

For the Ninth Circuit.

FIRST NATIONAL BANK OF ANTIOCH, a
Corporation,

Plaintiff in Error,

vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B.
HEARING, W. A. MEDLER, A. D. RICH-
ELDERFER and W. N. MORSE,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Oregon.

FILED

AUG 22 1922

F. D. MONCKTON,
CLERK.

United States
Circuit Court of Appeals

For the Ninth Circuit.

FIRST NATIONAL BANK OF ANTIOCH, a
Corporation,

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R. H. McKEAN, GEO. N. CROSFIELD, C. B.
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals for
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FIRST NATIONAL BANK OF ANTIOCH, a
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vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B.
HEARING, W. A. MEDLER, A. D. RICH-
ELDERFER and W. N. MORSE,

Defendants in Error.

Names and Addresses of the Attorneys of Record.

C. L. PEPPER,

The Dalles Oregon, and

HORACE M. STREET,

709 Hobart Building, San Francisco, Califor-
nia, for the Plaintiff in Error.

JOSEPH, HANEY & LITTLEFIELD,

Corbett Building, Portland, Oregon, and

PLOWDEN STOTT,

Yeon Building, Portland, Oregon,

for the Defendants in Error

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to R. H. Mc-
Kean, Geo. N. Crosfield, C. B. Hearing, W. A.
Medlar, A. D. Richelderfer and W. N. Morse,
Defendants in Error, GREETING:

You are hereby cited and admonished to be and

appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the —District of OREGON, — wherein — First National Bank of Antioch, a corporation is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable _____, United States District Judge for the District of Oregon this 2d day of August, A. D. 1922.

R. S. BEAN,

United States District Judge. [1*]

DUE SERVICE and receipt of a copy of the within Citation is hereby admitted this 2d day of August, 1922.

E. V. LITTLEFIELD,

Of Attorneys for Defendants in Error.

[Endorsed]: No. L-8886. United States District Court for the District of Oregon, First National Bank of Antioch, a Corporation, Plaintiff in Error, vs. R. H. McKean et al., Defendants in Error. Citation on Writ of Error. U. S. District Court, Dis-

*Page-number appearing at foot of page of original certified Transcript of Record.

trict of Oregon. Filed Aug. 2, 1922. G. H. Marsh,
Clerk.

Writ of Error.

UNITED STATES OF AMERICA,—ss:

The President of the United States of America, to
the Honorable, the Judges of the District Court
of the United States for the District of Oregon,
GREETING:

BECAUSE, in the record and proceedings, as
also in the rendition of the judgment of a plea
which is in the said District Court, before you, or
some of you, between First National Bank of An-
tioch, a corporation, Plaintiff in Error, and R. H.
McKean, Geo. N. Crosfield, C. B. Hearing, W. A.
Medlar, A. D. Richelderfer and W. N. Morse, De-
fendants in Error, a manifest error hath happened,
to the great damage of the said First National Bank
of Antioch, a corporation, plaintiff in error, as by
its complaint appears:

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy jus-
tice done to the parties aforesaid in this behalf, do
command you, if judgment be therein given, that
then, under your seal, distinctly and openly, you
send the record and proceedings aforesaid, with all
things concerning the same, to the United States
Circuit Court of Appeals for the Ninth Circuit, to-
gether with this writ, so that you have the same
at the city of San Francisco, in the State of Cali-
fornia, within thirty days from the date hereof, in

the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 2d day of August, in the year of our Lord One Thousand, Nine Hundred and Twenty-two.

[Seal] G. H. MARSH,
Clerk of the United States District Court for the
District of Oregon.

Allowed by:

_____,

[2]

DUE SERVICE and receipt of a copy of the within writ of error is hereby admitted this 2d day of August, 1922.

E. V. LITTLEFIELD,
Of Attorneys for Defendants in Error.

[Endorsed]: No. L-8886. United States District Court for the District of Oregon. First National Bank of Antioch, a Corporation, Plaintiff in Error, vs. R. H. McKean et al., Defendants in Error. Writ of Error. U. S. District Court, District of Oregon. Filed Aug. 2, 1922. G. H. Marsh, Clerk. (Form No. 60.)

In the District Court of the United States for the
District of Oregon.

November Term, 1921.

BE IT REMEMBERED, That on the 16th day
of January, 1922, there was duly filed in the Dis-
trict Court of the United States for the District of
Oregon, a complaint in words and figures as fol-
lows, to wit: [3]

In the District Court of the United States for the
District of Oregon.

No. L-8886—AT LAW.

Action on a Bond.

FIRST NATIONAL BANK OF ANTIOCH, a
Corporation,

Plaintiff,

vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B.
HEARING, W. A. MEDLER, A. D. RICH-
ELDERFER and W. N. MORSE,

Defendant.

Complaint.

Plaintiff complains of the defendants and for
cause of action alleges;

I.

That plaintiff at all of the times herein mentioned
was, and now is, a corporation duly organized and
existing under the laws of the United States of

America as a National Banking Association; that it has its only place of business in the Town of Antioch in the State of California and is a citizen and resident of the State of California.

II.

That each of the defendants, at all of the times herein mentioned was and now is a citizen and resident of the County of Sherman, State of Oregon, and of the said District of Oregon.

III.

That on the 25th day of November, 1919, Plaintiff commenced an action against one H. B. Thornberry in the Circuit Court of the State of Oregon in and for the County of Sherman, to recover from said H. B. Thornberry the sum of \$12,906.08, with interest and costs, and for the further sum of \$1,660.00 as attorneys' fees, upon a contract for the direct payment of money, and, on said 25th day of November, 1919, a Writ of Attachment [4] was issued out of said Court in said action and was, on said day, by the Sheriff of said Sherman County, levied upon all of the real property of the said H. B. Thornberry in the said Sherman County, State of Oregon, viz.: upon about 2000 acres of farm lands.

IV.

That on the 17th day of January, 1920, the said H. B. Thornberry, having theretofore appeared in said action, applied to said court for a release and discharge of the attachment and delivered to the Judge of said court and filed in said action a bond or undertaking duly signed, sealed and executed by

said defendants and each of them in words and figures as follows;

In the Circuit Court of the State of Oregon for
Sherman County.

FIRST NATIONAL BANK OF ANTIOCH, a
Corporation,

Plaintiff,

vs.

H. B. THORNBERRY,

Defendant.

UNDERTAKING TO DISCHARGE ATTACH-
MENT.

WHEREAS, the above-named plaintiff has commenced an action against the above-named defendant in the above-entitled Court upon an alleged contract for the direct payment of money, claiming therein that there is due and owing to plaintiff from defendant the sum of \$12,900.00 and interest and attorney fees, aggregating approximately \$15,000.00, and

WHEREAS, P. H. Buxton, Sheriff of Sherman County, Oregon, by virtue of a writ of attachment issued in said Court and cause, has attached certain property of defendant's, to wit, all the real property owned by the said defendant in said Sherman County, Oregon, and said defendant having applied to the said Court, upon due notice to the plaintiff, for an order to discharge said attachment and to release said property from the lien thereof, in com-

pliance with Sections 310 and 311, Lord's [5] Oregon Laws,

Now, therefore, in consideration of the premises, and for the purpose of making of said order, we, the undersigned, H. B. Thornberry, as principal, and R. H. McKean, Geo. N. Crosfield, C. B. Hearing, W. A. Medler, A. D. Richelderfer and W. N. Morse, Residents and freeholders in said County and State, as sureties, undertake, on behalf of defendant, and are bound to the plaintiff in the sum of \$15,000.00, and promise the plaintiff that, in case the plaintiff recover judgment in said action, the defendant will, or in default thereof, we, his sureties, will on demand, pay to the plaintiff the amount of the judgment that he may recover against the defendant in said action, not exceeding the amount of \$15,000.00 and the costs and disbursements of said action.

Dated at Wasco, Oregon, this 17th day of January, 1920.

H. B. THORNBERRY. (Seal)

R. H. McKEAN.

GEO. N. CROSFIELD.

C. B. HEARING.

W. A. MEDLER. (Seal)

A. D. RICHELDERFER. (Seal)

W. N. MORSE. (Seal)

State of Oregon,

County of Sherman,—ss.

We, H. B. Thornberry, R. H. McKean, Geo. N. Crosfield, C. B. Hearing, W. A. Medler, A. D. Rich-

elderfer and W. N. Morse, whose names are subscribed to the within undertaking as sureties, being severally duly sworn, each for himself says: That I am a resident and freeholder within the County of Sherman and State of Oregon, and am worth the sum of Fifteen Thousand Dollars over and above all debts and liabilities, and exclusive of property exempt from execution, and further that I am not a counselor or attorney at law, sheriff, clerk, or other officer of the Court

H. B. THORNBERRY.

R. H. McKEAN.

W. A. MEDLER.

GEO. N. CROSFIELD.

A. D. RICHELDERFER.

C. B. HEARING.

W. N. MORSE. [6]

Subscribed and sworn to before me this 17th day of January, 1920.

J. M. MORRISON,

Notary Public for Oregon.

My commission expires October 31, 1921.

V.

That upon the giving and filing of said bond or undertaking in said action the said Circuit Court of Sherman County made its order discharging the said attachment and the said property of the said defendant was thereupon released and discharged therefrom.

VI.

That on the 12th day of January, 1922, plaintiff

recovered a judgment against said H. B. Thornberry in said action for the sum of \$13,902.50.

VII.

That the said H. B. Thornberry defaulted in payment of said judgment and has not paid the same or any part thereof.

VIII.

That after the said default of said H. B. Thornberry and prior to the commencement of this action plaintiff demanded payment of said judgment from said defendants and each of them. That defendants and each of them have failed, neglected and refused to pay plaintiff the said sum of \$13,902.50, the amount of said judgment as aforesaid, or any part thereof.

WHEREFORE plaintiff prays judgment in its favor and against said defendants and each of them for the sum of \$13,902.50 with interest thereon at the rate of six per cent per annum from January 12, 1922 and for its costs and disbursements herein incurred. [7]

C. L. PEPPER,

The Dalles, Oregon,

HORACE M. STREET,

709 Hobart Building,

San Francisco, California,

Attorneys for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

Horace M. Street, being first duly sworn deposes and says that he is the attorney and agent for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true as he verily believes. That he makes this affidavit of verification on behalf of the said plaintiff for the reason that none of the officers of the plaintiff are within the State and District of Oregon and for the further reason that he is more fully informed as to the facts stated in said complaint than any of the officers of the plaintiff.

HORACE M. STREET.

Subscribed and sworn to before me this 16th day of January, 1922.

[Seal]

M. A. HENLEY,
Notary Public for Oregon.

My commission expires January 5, 1924.

Filed January 16, 1922. G. H. Marsh, Clerk.
[8]

AND AFTERWARDS, to wit, on the 21st day of February, 1922, there was duly filed in said Court, a demurrer to complaint, in words and figures as follows, to wit: [9]

In the District Court of the United States for the
District of Oregon.

No. 8886.

FIRST NATIONAL BANK OF ANTIOCH, a Cor-
poration,

Plaintiff,

vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B.
HEARING, W. A. MEDLER, A. D. RICH-
ELDERFER and W. N. MORSE,

Defendants.

Demurrer.

Come now the above-named defendants and demur to the complaint of plaintiff on the file herein on the grounds and for the reasons as follows, to wit:

(a) That the Court has no jurisdiction of the person of the defendants, or the subject of the action.

(b) That the plaintiff has not legal capacity to sue.

(c) That the complaint does not state facts sufficient to constitute a cause of action.

JOSEPH, HANEY & LITTLEFIELD,
Attorneys for Defendants, All of Portland, Oregon.

To First National Bank of Antioch, and To C. L.
Pepper and Horace M. Street, its Attorneys:

I hereby certify that in my opinion the above demurrer is well founded in law.

PLOWDEN STOTT,

Of Attorneys for Defendants. [10]

State of Oregon,
County of Multnomah,—ss.

I, Plowden Stott, being first duly sworn to depose and say due and legal service of the within demurrer was made by me depositing in the Post-office at Portland, Oregon, a copy of said demurrer duly certified by me as such and addressed to C. L. Pepper, Attorney at Law, The Dalles, Oregon.

PLOWDEN STOTT.

Subscribed and sworn to before me this 21st day of February, 1922.

[Seal]

WM. W. BANKS,
Notary Public for Oregon.

My commission expires June 17, 1922.

Filed February 21, 1922. G. H. Marsh, Clerk.
[11]

AND AFTERWARDS, to wit on Monday, the 10th day of April, 1922, the same being the 21st judicial day of the Regular March term of said Court. Present the Honorable ROBERT S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [12]

In the District Court of the United States, for the
District of Oregon.

No. L-8886.

FIRST NATIONAL BANK OF ANTIOCH,

vs.

R. H. McKEAN, et al.

April 10, 1922.

**Minutes of Court—April 10, 1922—Order
Sustaining Demurrer and Judgment
for Defendants.**

This cause was heard by the Court upon the demurrer of defendants to the complaint herein, and was argued by Mr. C. L. Pepper, of counsel for plaintiff, and by Mr. Plowden Stott and Mr. E. V. Littlefield, of counsel for defendants. Upon consideration whereof

IT IS ORDERED that said demurrer be and the same is hereby sustained, that said complaint be and the same is hereby dismissed, that plaintiff take nothing by this action and that said defendants do have and recover of and from said plaintiff their costs and disbursements herein, taxed in the sum of \$10.50 and that said defendants have execution therefor. [13]

AND AFTERWARDS, to wit, on the 24th day of July, 1922, there was duly filed in said Court, a petition for writ of error, in words and figures as follows, to wit: [14]

In the District Court of the United States, for the
District of Oregon.

No. L-8886—AT LAW.

FIRST NATIONAL BANK OF ANTIOCH, a Cor-
poration,

Plaintiff,

vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B.
HEARING, W. A. MEDLER, A. D. RICH-
ELDERFER and W. N. MORSE,

Defendants.

Petition for Writ of Error.

Now comes First National Bank of Antioch, plaintiff in the above-entitled action, by its attorney and respectfully shows that on the 10th day of April, 1922, a final judgment was entered in the above-entitled action in favor of the defendants and against the plaintiff herein, viz: a judgment dismissing said action upon the sustaining of defendants' demurrer to plaintiff's complaint.

YOUR PETITIONER, feeling itself aggrieved by the said judgment hereby petitions for an order allowing it to prosecute a WRIT OF ERROR to the United States Circuit Court of Appeals, Ninth Circuit, under the laws of the United States, in such cases made and provided.

WHEREFORE, the premises considered, your petitioner prays that a Writ of Error in this behalf to the United States Circuit Court of Appeals,

Ninth Circuit, sitting in the City and County of San Francisco, State of California, in said Circuit, for the correction of error committed by said District Court, in the sustaining of said demurrer and the entering of the said judgment as aforesaid, for the reasons set forth in your petitioner's assignment of errors filed herewith, and that a transcript of the record, proceedings and papers upon which said judgment was based, duly authenticated, may be sent to the United States Circuit Court of Appeals, Ninth Circuit.

HORACE M. STREET,

Attorney for Plaintiff.

Filed July 24, 1922. G. H. Marsh, Clerk. [15]

AND AFTERWARDS, to wit, on the 24th day of July, 1922, there was duly filed in said Court, an assignment of errors, in words and figures as follows, to wit: [16]

In the District Court of the United States, for the District of Oregon.

No. L-8886—AT LAW.

FIRST NATIONAL BANK OF ANTIOCH, a Corporation,

Plaintiff,

vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B. HEARING, W. A. MEDLER, A. D. RICHELDERFER and W. N. MORSE,

Defendants.

Assignment of Errors.

NOW COMES THE PLAINTIFF in the above-entitled action and files the following assignment of errors upon which it will rely in the prosecution of its Writ of Error to review a final judgment entered against it in said action on the 10th day of April, 1922, viz.: a judgment dismissing said action entered upon the sustaining of the defendants' demurrer to the plaintiff's complaint:

1. That the District Court erred in holding the bond or undertaking set forth in plaintiff's complaint to be in compliance with Section 311, Oregon Laws, in this: said Section 311 provides that the bond given to release property from attachment must be "to the effect that the sureties will pay to the plaintiff the amount of the judgment that may be recovered against the defendant in the action," while the bond or undertaking herein involved provides that "in case the plaintiff recover judgment in said action the defendant will, or in default thereof, we his sureties, will, on demand, pay to the plaintiff the amount of the judgment that he may recover against the defendant in the action."

2. That the District Court erred in holding that, the bond being sufficient for the State Court to order the release of the property of Thornberry from the lien of the attachment, that therefore, it was an undertaking upon which judgment, under Section 308, Oregon Laws, could have been given [17] against the sureties at the time judgment was

entered against the defendant in the action against said Thornberry.

3. That the District Court erred in holding, that, because judgment was not entered against the defendants herein at the time judgment was entered against Thornberry in the action in the Circuit Court of Sherman County, State of Oregon, that the plaintiff lost its right to demand in this, or in any court of competent jurisdiction, judgment for the amount of plaintiff's judgment against said Thornberry which defendants contracted to pay to plaintiff, upon demand, in consideration of the release of Thornberry's property from the attachment.

4. That the District Court erred in holding that the said bond was not a valid contractual or common law obligation, against the defendants.

5. That the District Court erred in holding said bond or undertaking to be a statutory Obligation.

6. That the District Court erred in holding that plaintiff had the right to enter a judgment against defendants upon said undertaking in the action wherein the same was given, under Section 308, Oregon Laws.

7. That the District Court erred in holding that plaintiff's sole remedy upon said bond was in the action wherein the same was given, and under said section 308, Oregon Laws.

8. That the District Court erred in holding that the failure of plaintiff to cause judgment to be entered against defendants, in the action wherein

said bond was given, released the defendants from liability thereon.

9. That the District Court erred in holding that plaintiff has not a right of action against defendants upon said bond, independently of the remedy provided by Section 308, Oregon Laws, whether or not said bond complies with Section 311, Oregon Laws.

10. That the District Court erred in holding plaintiff [18] barred from maintaining this action in this:

a. That plaintiff could not have had judgment in the action wherein said bond was given against the defendants for the reason that bond is not in compliance with Section 311, Oregon Laws.

b. That said bond, not being in compliance with said Section 311, plaintiff had a right of action against defendants upon said bond as a common-law obligation.

c. That said bond, not being in compliance with said section 311, is a contract between plaintiff and defendants based upon a valuable consideration, viz.: the release of the lien of plaintiff's attachment.

d. That said bond or undertaking is a contract between plaintiff and defendants whether or not it is in compliance with said section 311, Oregon Laws.

11. That the District Court erred in holding that plaintiff's complaint does not state facts sufficient to constitute a cause of action, for the reasons set forth in paragraphs 1 to 10 hereof.

12. That the District Court erred in holding that plaintiff has no capacity to sue, in this: it appears from the complaint that plaintiff is a National Bank, duly organized and existing under the laws of the United States, doing business solely in California; that the defendants are each residents of Oregon and, that the amount in controversy is more than \$3,000.00.

13. That the District Court erred in holding that it had no jurisdiction of the persons of the defendants for the reasons set forth in paragraph 12 hereof.

14. That the District Court erred in holding that it had no jurisdiction of the subject of the action for the reasons set forth in paragraphs 1 to 10 hereof.

WHEREFORE the plaintiff prays that the judgment [19] of the District Court be reversed and the said District Court directed to overrule the defendants' demurrer to plaintiff's complaint.

Dated July 24, 1922.

HORACE M. STREET,
Attorney for Plaintiff.

Filed July 24, 1922. G. H. Marsh, Clerk. [20]

AND AFTERWARDS, to wit, on the 1st day of August, 1922, there was duly filed in said Court, an order allowing writ of error, in words and figures as follows, to wit: [21]

In the District Court of the United States for the
District of Oregon.

FIRST NATIONAL BANK OF ANTIOCH, a
Corporation,

Plaintiff,

vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B.
HEARING, W. A. MEDLER, A. D.
RICHELDERFER and W. N. MORSE,
Defendants.

Order Allowing Writ of Error.

Upon motion of the plaintiff above-named, and upon filing a petition for a writ of error and assignment of errors:

IT IS HEREBY ORDERED that a writ of error be, and it is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein on the 10th day of April, 1922, and that a certified transcript of the record, and all proceedings, be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that the amount of the bond on said writ of error be, and it is hereby fixed at the sum of \$300.00.

Dated July 27, 1922.

WM. W. MORROW,
Judge of the United States Circuit Court of
Appeals, Ninth District.

Filed August 1, 1922. G. H. Marsh, Clerk. [22]

AND AFTERWARDS, to wit, on the 1st day of August, 1922, there was duly filed in said Court, a bond on writ of error, in words and figures as follows, to wit: [23]

S. F. #31274-22.

In the District Court of the United States for the
District of Oregon.

FIRST NATIONAL BANK OF ANTIOCH, a
Corporation,

Plaintiff,

vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B.
HEARING, W. A. MEDLER, A. D.
RICHELDERFER, and W. N. MORSE,
Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, First National Bank of Antioch, a corporation, as principal, and United States Fidelity and Guaranty Company, a corporation, having its principal place of business in the city of Baltimore, State of Maryland, and having a paid-up capital of Four Million Five Hundred Thousand Dollars, duly incorporated under the laws of the State of Maryland, for the purpose of making, guaranteeing and becoming surety on bonds and undertakings, and having complied with all the requirements of the Laws of the State of Oregon and United States of America respecting such corporations, are held

and firmly bound unto the above-named defendants in the sum of Three Hundred Dollars (\$300.00), lawful money of the United States, to be paid to them and their respective executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our successors, by these presents.

SEALED with our seals and dated this 29th day of July, 1922.

WHEREAS, the above-named plaintiff has prosecuted a writ of error to the United States Circuit Court of Appeals, Ninth Circuit, to reverse the judgment of the District Court of the United States for the District of Oregon, entered herein on [24] April 10, 1922, in the above-entitled action:

NOW THEREFORE, the condition of this obligation is such that if the above-named plaintiff shall prosecute its said writ of error to effect and answer all costs if it fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

[Seal]

FIRST NATIONAL BANK
OF ANTIOCH.

By HERBERT A. WEST,
Cashier and Secretary.

[Seal]

UNITED STATES FIDELITY
& GUARANTY COMPANY.

By HENRY V. D. JOHNS,
By ERNEST W. SWINGLEY,
Attorneys in Fact.

State of California,
City and County of San Francisco,—ss.

On this 29th day of July in the year one thousand nine hundred and twenty-two, before me, W. W. Healey, a Notary Public in and for the City and County of San Francisco, personally appeared Henry V. D. Johns and Ernest W. Swingley, known to me to be the persons whose names are subscribed to the within instrument as the Attorneys in Fact of the United States Fidelity and Guaranty Company, and acknowledged to me that they subscribed the name of the United States Fidelity and Guaranty Company thereto as principal and their own names as Attorneys in Fact.

[Seal] W. W. HEALEY,
Notary Public in and for the City and County of
San Francisco, State of California.

Filed August 1, 1922. G. H. Marsh, Clerk. [25]

AND AFTERWARDS, to wit, on the 1st day of August, 1922, there was duly filed in said Court, a praecipe for transcript, in words and figures as follows, to wit: [26]

In the District Court of the United States for the
District of Oregon.

FIRST NATIONAL BANK OF ANTIOCH, a
Corporation,

Plaintiff,

vs.

R. H. McKEAN, GEO. N. CROSFIELD, C. B.
HEARING, A. D. RICHELDERFER, W.
A. MEDLER and W. N. MORSE,

Defendants.

Praeipce for Transcript of Record on Writ of Error.

WILL YOU PLEASE CERTIFY to the United States Circuit Court of Appeals of the Ninth District the following records and papers herein, to wit:

The plaintiff's complaint.

The defendant's demurrer to plaintiff's complaint.

The judgment and order sustaining defendant's demurrer to plaintiff's complaint and dismissing said action.

Assignment of errors.

Petition for writ of error, order allowing writ of error.

Writ of error and citation.

Bond.

Praeipce.

HORACE M. SWEET,
Attorney for Plaintiff.

Due service and receipt of a copy of the within praecipe is hereby admitted this 2d day of August, 1922.

JOSEPH, HANEY & LITTLEFIELD,
PLOWDEN STOTT,
Attorneys for Defendants.

Filed August 2, 1922. G. H. Marsh, Clerk. [27]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, pursuant to the foregoing writ of error, and in obedience thereto, do hereby certify that the foregoing pages numbered three to twenty-seven inclusive, constitute the transcript of record on writ of error on the cause in said Court, in which the First National Bank of Antioch is plaintiff and plaintiff in error, and R. H. McKean, Geo. N. Crosfield, C. B. Hearing, W. A. Medler, A. D. Richelderfer and W. N. Morse are defendants and defendants in error; that the said transcript is a true and complete transcript of the records and proceedings had in said Court and said cause, as the same appears of record and on file at my office and in my custody. And I further certify that I returned to the United States Circuit Court of Appeals for the Ninth Circuit, with the said transcript of record attached, the original Writ of Error issued in said cause and the citation filed therein.

And I further certify that the cost of the foregoing transcript is \$7.10, and that the same has been paid by the said plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court at Portland in said District this 10th day of August, 1922.

[Seal]

G. H. MARSH,
Clerk. [28]

[Endorsed]: No. 3911. United States Circuit Court of Appeals for the Ninth Circuit. First National Bank of Antioch, a Corporation, Plaintiff in Error, vs. R. H. McKean, Geo. N. Crosfield, C. B. Hearing, W. A. Medler, A. D. Richelderfer and W. N. Morse, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Oregon.

Filed August 14, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

